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August 12, 2015

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**VIA EMAIL**

Jonathan Kravis, Trial Attorney  
Richard Pilger, Election Crimes Branch Director  
United States Department of Justice  
Criminal Division  
Public Integrity Section  
Email Address: [REDACTED]

**Re: *In re Search of Electronic Communications in The Account [REDACTED]*,  
Case No. 4:14-mc-00036, United States District Court, Southern District of Iowa**

Dear Mr. Kravis and Mr. Pilger:

As you know, we represent Google Inc. with respect to the search warrant issued in this case, which seeks certain records associated with a Gmail user, Jesse Benton. After Mr. Benton indicated he would appeal the court's August 10th ruling denying his motion to quash and file a concurrent motion to stay, Google informed the government that it intended to await the outcome of this proceeding before producing any information. You informed me via voicemail that absent a motion to stay filed by either Mr. Benton or Google, the government would file a motion to compel and/or for sanctions. Mr. Benton has now filed a Motion for Temporary Relief asking the court to stay Google's compliance with the warrant. *See* Dkt. No. 22. We understand that Mr. Benton's motion forestalls any motion to compel or for contempt. Please let me know immediately if this understanding is not correct.

Separately, I write to request that the Government correct the record as to how Mr. Benton came to be notified of the warrant. The warrant was not accompanied by a nondisclosure order issued pursuant to 18 U.S.C. § 2705(b), so Google informed the Government via email that its policy was to provide notice to the user unless the government obtained a § 2705(b) order. FBI Special Agent Karen LoStracco responded that "we do not have an objection to [REDACTED] being notified for the following email account [REDACTED]". I have attached that email thread as Exhibit A for your reference.

Nevertheless, the Court's order denying the user's Motion to Quash the warrant contains a footnote stating that "[t]he Record does not establish how Benton's counsel became aware of the warrant given the Court's authorization of delayed notification." Dkt No. 19. The Government's filings with the Court omit this information from the record. *See* Dkt. No. 7 at 3, n. 2. ("At the time the warrant was issued, the Court delayed notification of the account holder (that is the movant, Mr. Benton) by the Government under 18 U.S.C. §§ 3103(a) and 2705 for 30 days.

Jonathan Kravis  
Richard Pilger  
August 12, 2015  
Page 2

Nevertheless, sometime before September 2, Google, Inc. notified Mr. Benton of the issuance of the warrant.”). In fact, the delayed notice provisions of 18 U.S.C. §§ 3103(a) and 2705(a) apply to the Government, not Google, and do not substitute for a § 2705(b) nondisclosure order to a provider. Moreover, Google lawfully notified Mr. Benton only after Special Agent LoStracco expressly told Google that it could do so. We trust that this omission was inadvertent and that you intend to correct the record on this point.

Please let me know if you would like to discuss further.

Sincerely,



Randy Tyler

JRT:jrt  
Attachment

cc: John Roche, via email to [JRoch@perkinscoie.com](mailto:JRoch@perkinscoie.com)

# **EXHIBIT A**



Jul 25

This figure is a 2D grayscale heatmap representing a probability density or a similar scalar field. The distribution is highly localized, showing several distinct vertical peaks. The highest peaks are located in the central vertical bands, with the central-most peak being the most intense. The distribution is roughly rectangular, spanning from approximately x=10 to x=110 and y=10 to y=110. The background is dark, and the peaks are lighter gray, indicating higher values of the scalar field.

[REDACTED]

 uslawenforcement to [REDACTED] Jul 25

This is automated response to advise you that Google Legal Investigations Support has successfully received your legal request submission.

Google receives a very high volume of legal process every day. The team processes legal requests in the order that we receive them. If your request relates to exigent circumstances or if you have further questions, please email [REDACTED], referencing the Case number in the subject line of this email. Please include a description of the exigency or your question(s) in detail so that we may assess your request accordingly.

Regards,  
Google Legal Investigations Support

 lis\_form\_submission to [REDACTED] Aug 7 (3 weeks ago)

Hello,

We have received your legal process. When Google receives legal process for a user's account, it's our policy to notify the user via email before any information is disclosed, unless such notice is prohibited by law. Because we did not receive a non-disclosure order, and there is no other apparent legal prohibition, Google intends to notify the user(s) before producing data in this matter. Prior to notifying the user(s), we will take steps to preserve the information you requested and are entitled to in accordance with the type of legal process submitted.

The notification emailed to the user(s) will include your agency name, agency contact information, and a reference number or case number, if applicable. Google may also provide a copy of the legal process if requested to do so.

We await your confirmation that:

- 1) you have no objection to notification to the user(s), or
- 2) you wish to withdraw the legal process, or
- 3) you are seeking an order issued by a judge that prevents Google from notifying the user(s), such as a non-disclosure order under section 2705(b) of the Electronic Communications Privacy Act., or
- 4) you believe there is an applicable statute that specifically prohibits Google from disclosing the existence of the legal process (please provide a citation to the statute and identify the language that you believe prohibits notification).

We may not give notice where law enforcement attests that exceptional circumstances exist involving danger of death or serious physical injury to any person.

We will not notify the user(s) or produce data until we hear from you.

Regards,  
Google Legal Investigations Support



Lostracco, Karen L.

Aug 8 (3 weeks ago)



This is notification that we do not have an objection to the users being notified for the following e-mail account [REDACTED]

: [REDACTED]



4:14-MJ-184 [REDACTED]

Please keep me informed as to the status of the production.

Thank you,  
SA Karen L. LoStracco  
Federal Bureau of Investigation  
Washington Field Office  
Northern Virginia Resident Agency



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From: [REDACTED]  
To: [REDACTED]  
Sent: Thu Aug 07 19:51:10 2014  
Subject: [REDACTED] ACTION REQUIRED in Relation to Your Legal Process



uslawenforcement

to [REDACTED]



Aug 8 (3 weeks ago)

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Regards,  
Google Legal Investigations Support